

FILED
WILLIAMSON COUNTY
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2007 MAR 28 PM 1:38

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
TWENTY-FIRST JUDICIAL DISTRICT AT FRANKLIN

STATE OF TENNESSEE, *ex rel.*
ROBERT E. COOPER, JR., ATTORNEY
GENERAL and REPORTER,

Plaintiff,

v.

ROLAND FROEHLIG, a.k.a. Rollie Froehlig,
THEODORE HOWES, a.k.a. Ted Howes,
NATIONAL FULFILLMENT, INC., and
ENTERTAINMENT AMERICA, INC.,

Defendants.

ENTERED 3-2-07

No. 33293

JURY DEMAND

**ORDER GRANTING
STATUTORY TEMPORARY INJUNCTION AND ASSET FREEZE
INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The State's Motion for Temporary Injunction with Asset Freeze came to be heard on February 28, 2007. Based upon a review of the pleadings, the evidence adduced at the hearing, the record herein, and oral arguments of counsel, the Court finds that the State's Motion for Temporary Injunction with Asset Freeze should be granted according to terms below. Specifically, the Court finds that:

1. This Court has jurisdiction of the subject matter of this case pursuant to Tenn. Code Ann. § 47-18-2105(b). Venue is proper in Williamson County pursuant to Tenn. Code Ann. § 47-18-2105(b) because it is where lead Defendant Froehlig resides.
2. The Court concurs that the proper standard for a statutory temporary

injunction is the one applied in *State v. Olomoshua*, No. 06C2912, 2, Cir. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Nov. 2006), *Tennessee Real Estate Comm'n v. Hamilton*, No. 96-3330-III, 12-13, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff'd* No. 01A01-9707-CH-00320, 1998 WL 272788, at *4-6 (Tenn. Ct. App. May 22, 1998), *State v. Continental Distributing Co., Inc.*, No. 74892, 1-3, Ch. Ct. of Tenn., 11th Jud. Dist., Hamilton County, Part I (Oct. 1994), and *FTC v. Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634 (M.D. Tenn. Aug. 18, 2005). Pursuant to *Olomoshua*, *Tennessee Real Estate Commission*, *Continental Distributing Co., Inc.*, and *National Testing Services*, the movant's burden for a statutory temporary injunction is met upon a demonstration of a substantial likelihood of success of demonstrating at trial that the non-movants are violating the statute. A showing of immediate and irreparable harm is assumed with the violation of the statute. Proof of immediate and irreparable harm or the inadequacy of other remedies is not required for a statutory temporary injunction.

3. The Court finds that the State has shown a substantial likelihood of ultimate success on the merits of its claim that Defendants Froehlig, Howes, National Fulfillment, Inc., and Entertainment America, Inc. engaged in identity theft and thereby violated the Tennessee Identity Theft Deterrence Act, Tenn. Code Ann. § 47-18-2103.

4. The Court finds that the public equities advanced by the State in safeguarding the monies generated by the Defendants' "EmTech" account for consumer restitution and other ascertainable losses outweigh the private equities favoring Defendants, that a temporary injunction granting an asset freeze is in the public interest,

and therefore, a statutory injunction must issue.

5. Pursuant to Tenn. Code Ann. § 47-18-2105(c), this statutory temporary injunction shall issue without the State posting a bond.

TEMPORARY INJUNCTION

IT IS SO ORDERED THAT pursuant to Tenn. Code Ann. § 47-18-2105, Defendant Froehlig, Defendant Howes, Defendant National Fulfillment, Inc., and Defendant Entertainment America, Inc. their officers, directors, employees, agents, successors and assigns, and other persons in active concert or participation with the Defendants who receive actual notice of this Temporary Injunction With Asset Freeze Order, are prohibited from engaging, directly or indirectly, in the following acts until entry of an Order by this Court expressly stating otherwise:

- (A) If the item to be billed is a good, Defendants shall be strictly prohibited from sending consumer credit card information, debit card information, or information of other means of payment to a third party for billing, or billing consumer credit cards, debit cards, or other means of payment themselves, when the Defendants do not have a sample of the actual good and a name and referral phone number for a person responsible for the entity offering the good. The sample product, name of the person responsible for the entity offering the good, and the referral phone number of the person responsible for the entity offering the good shall at least be distributed to the officer of National Fulfillment who manages the Consumer Care Division from day-to-day and the Vice President of Entertainment America, Inc.
- (B) If the item to be billed is a service (for example, without limitation, a discount prescription drug plan), Defendants shall be strictly prohibited from sending consumer credit card information, debit card information, or information of other means of payment to a third party for billing, or billing consumer credit cards, debit cards, or other means of payment themselves, when the Defendants do not have a sample brochure, application, or other marketing material describing the service to consumers and a referral phone number and the name of the owner of the entity offering the service. The

sample brochure, application, or other marketing material describing the service to consumers and a referral phone number and name of the owner of the entity offering the service shall at least be distributed to the officer who manages the Consumer Care Division at National Fulfillment, Inc. from day-to-day and the Vice President of Entertainment America, Inc.

(C) Defendants shall be strictly prohibited from sending consumer credit card information, debit card information, or information from other means of payment to a third party for billing, or billing consumer credit cards, debit cards, or other means of payment themselves, when the Defendants have not shipped the good if the Defendants do not have the specific date that consumers were shipped the good or service agreement or the specific date that the consumer ordered the good or agreed to sign up for the service.

(D) Defendants shall be strictly prohibited from disposing, destroying, concealing, failing to preserve, or discarding any and all business records or personal records relating to the "EmTech" account, this includes, but is not limited to:

(1) All electronic communications or e-mails, hand written notes, or other correspondence to or from Defendant Froehlig, Defendant Howes, Vicki Martin, Rich Shockley, Jerry Bellante, Becky Cardiff, Townley Chattman, Diana Birchett, Anna Perry, Darlene Wiley, Norma Jean Stroupe, Cindy Dinwiddie, Melissa Carver, Tammie Turner, Karen Kastens, Sherry Mount, Mary Alice, or Jeanette Page concerning the EmTech account from January 1, 2005 until conclusion of these proceedings;

(2) All available phone records, phone bills, or phone logs to or from Defendant Howes or Defendant Froehlig's office phone number or their assistants from January 1, 2005 until August 28, 2006;

(3) Any and all copies in the Defendants' care, custody, control or possession of the "EmTech," "Emson Products," "Banjo Minnow," "Aloette," "Barbara K," and "Youth Factor" consumer lists, including but not limited to those lists that contain the consumer's name, billing address, shipping address, credit card number, debit card number, expiration date, and date ordered, contained on a compact disc, in an electronic spreadsheet or database, or otherwise;

(4) The Spri exercise band produced by Defendants, in the Defendants' care, custody, control or possession;

(5) All consumer call reports or call notes concerning the "EmTech" account; and

(6) Any and all saved word processing documents or metadata from these documents referencing "Richard Whitehead" or "Dick Whitehead" whether located at National Fulfillment or on a personal computer.

IT IS SO ORDERED THAT Defendant Froehlig, Defendant Howes, Defendant National Fulfillment, Inc., and Defendant Entertainment America, Inc. their officers, directors, employees, agents, successors and assigns, and other persons in active concert or participation with the Defendants who receive actual notice of this Temporary Injunction with Asset Freeze Order, shall affirmatively be required to do the following until entry of an Order by this Court expressly stating otherwise:

- (A) In the event that Defendants seek to send consumer credit card information, debit card information, or information of other means of payment to a third party for billing, or seek to bill consumer credit cards, debit cards, or other means of payment themselves, when the Defendants have not shipped the good or service materials themselves, provided that the Defendants also have the specific date that consumers were shipped the good or service materials and the specific date that consumers ordered the good or service, the Defendants shall notify, through counsel, the Attorney General of any such billing at least ten (10) calendar days before commencement of any such billing. Before billing occurs, the Defendants shall provide access to documents to verify the information contained in that account, including but not limited to specific shipping dates or order dates, to the Attorney General upon request.

ASSET FREEZE

IT IS SO ORDERED that in order to preserve funds for consumer restitution and other ascertainable losses of consumers:

- (A) Corporate Defendants Entertainment America, Inc. and National Fulfillment, Inc. shall be prohibited from liquidating, encumbering, borrowing against, transferring to any other entity or person, withdrawing

or otherwise dissipating the sum of **\$215,000** until otherwise ordered by this Court. Further, this sum shall be placed in an escrow account at a bank of the Defendants' choosing that is FDIC approved and located in Tennessee **by the close of business on March 10, 2007** to be so held until otherwise ordered by this Court.

(B) **By the close of business April 16, 2007**, corporate Defendants shall place and deposit the sum of **\$85,000** in the escrow account set up as provided for in paragraph (A). Corporate Defendants shall be prohibited from liquidating, encumbering, borrowing against, transferring to any other entity or person, withdrawing or otherwise dissipating the sum of **\$300,000**, the sum of the \$215,000 deposit and the \$85,000 deposit, until otherwise ordered by this Court.

(C) **By close of business April 30, 2007**, the Defendants shall produce any and all available financial records demonstrating the most current financial health of Entertainment America, Inc. and National Fulfillment, Inc. to both the Court and to the State. Such production shall be reasonable and not unduly burdensome on either company as determined by this Court.

IT IS SO ORDERED.

Proof of the establishment of and deposit of the above required amounts shall be filed with the Court and provided to the State within **two (2) business days of deposit**.

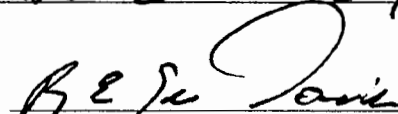
IT IS SO ORDERED that both parties have the ability at any time before trial to petition the Court to adjust the asset freeze component of this Order either upwards or downwards for good cause. Such an amendment to this Order shall be made after a hearing, based on the written agreement of the parties and approved by this Court, or otherwise ordered by this Court.

No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-2105(g).

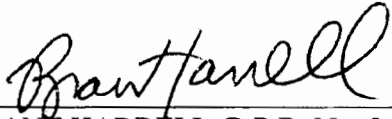
In support of the Court's entry of this Order granting the State's Motion for Temporary Injunction with Asset Freeze, the Court relies upon the contemporaneously filed State's Memorandum of Facts and Law in Support of Motion for Temporary Injunction, the State's Complaint, the Attachments (and their accompanying Exhibits) to the State's Temporary Injunction Motion, the Affidavits filed in the State's subsequent Notice of Filing and the

arguments made at the Temporary Injunction Hearing. The record demonstrates that the State has shown a likelihood of success on the merits of its action and that the temporary injunction and the asset freeze are in the public interest. **IT IS SO ORDERED.**

ISSUE DATE: Mar 2 07 m.


CHANCELLOR ROBERT E. LEE DAVIES

SUBMITTED FOR ENTRY:



BRANT HARRELL, B.P.R. No. 24470
Office of the Attorney General of Tennessee
Consumer Advocate and Protection Division
425 Fifth Avenue, North
Nashville, TN 37243
(615) 532-9299
(615) 532-2910 (fax)
brant.harrell@state.tn.us

Attorney for Plaintiff, the State of Tennessee

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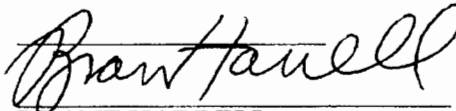
CERTIFICATE OF SERVICE

I, Brant Harrell, do hereby certify that the foregoing document was sent via US Mail and Facsimile where available to the following addresses:

William Ramsey, Esq. (Counsel for Defendant Rollie Froehlig)
Neal & Harwell, PLC
Suite 2000, One Nashville Place
150 4th Avenue North
Nashville, TN 37219-2498
(615) 726-0573 (fax)

David Herbert (Counsel for Remaining Defendants)
Ortale, Kelly, Herbert & Crawford
200 Fourth Avenue, North
Nashville, TN 37219
(615) 726-1494 (fax)

On this the 15th day of March, 2007


BRANT HARRELL
Assistant Attorney General

104479

CLERK'S CERTIFICATE
I hereby certify that a true and exact copy of
foregoing has been mailed or delivered to
all parties or counsel of record.

3-2-07 Sharon A. Sartor, Dep.
Date Clerk & Master